

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3101 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DEVIYANIBAHEN J DHOLAKIA

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioners

SMT SIDDHI TALATI for Respondents No. 1, 2

MS MAMTA VYAS for Respondent No. 3

MR AD MITHANI for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/08/97

C.A.V. JUDGEMENT

1. The petitioner No.6 has expired. His widow, Bhagirathi Mukundrai Dave, filed C.A. No.5683/97 for bringing her on record of this Sp. C.A. as his heir and legal representative. That application has been granted today. The office is directed to make necessary correction in the cause title of this Sp.C.A. by showing

the applicant as petitioner No.6/1.

2. The petitioners, Primary Teachers in the city of Rajkot under the Nagar Prathmik Sikshan Samiti, Municipal Corporation of Rajkot, filed this writ petition for themselves and on behalf of other similarly situated Primary Teachers whose names are given in Annexure 'A'.

3. The grievance of the petitioners is that the respondents No.1, 2 and 3 should have prepared a common gradation list of Primary Teachers of District Rajkot and to grant selection grade in accordance with the norms prescribed by the State Government and to pass appropriate orders in favour of the petitioner granting selection grade on the basis of the length of service as if they are in the seniority list of Primary Teachers of District Committee. Further prayer has been made for quashing and setting aside of the modification of the orders granting selection grade to the Primary Teachers working under the District Education Committee, who were otherwise junior to the petitioners on the basis of the total length of service and who have been wrongly conferred the selection grade in preference to the petitioners and other similarly situated persons. The selection scale has been introduced by the State of Gujarat vide Government Resolution dated 16th September, 1976 and 20th December, 1976 w.e.f. 1-1-1973 to those teachers who had completed 15 years of service on the said date and who were trained teachers.

4. The petitioners were recruited and appointed by the Government as Primary Teachers prior to 1-11-1956 and they were serving under the Directorate of Education. On constitution of District Local Board, constituted under the Bombay Primary Education Act, the services of the petitioners were transferred to that Board on deputation. On introduction of the Gujarat Panchayat Act, the District Local Board was dissolved and the District Education Committee, respondent No.3, was constituted and the petitioners' services were transferred on same conditions and were treated as deputation to District Panchayat. On 6-4-1966, the Primary Education set up in the city of Rajkot came to be transferred to the Municipality through its Education Committee (Nagar Samiti) and were brought under the administrative control of Municipality and later on under the Municipal Corporation. At this junction, it happened that many of the persons junior to the petitioners who were serving outside the limits of Rajkot city continued to serve under the District Education Committee of Panchayat being

in charge of the Primary Education set-up for the District Rajkot excluding Rajkot city. The petitioners who were working within the area of Rajkot city have come under the administrative control of Municipality and later on Municipal Corporation. It is the case of the petitioners that they continued on deputation under the Municipal Corporation and they were not finally absorbed in that Corporation and had their liens in the District Panchayat. The seniority list of this class of employees has been prepared on the basis of their passing of the qualifying examination and not on the basis of the continuous length of service. So many of the primary teachers of the Rajkot district who remained under the control of District Panchayat got the selection scale though they were junior to the petitioners. It had resulted because on wrong criteria the seniority list has been prepared. Not only this, the petitioners have made a grievance that many of the primary teachers working under the District Panchayat got themselves transferred to the Corporation after they were given the selection scale and though they are junior to the petitioners they are getting the higher pay.

5. However, the seniority dispute has been resolved by the Division Bench of this Court in the Letters Patent Appeal No.112 of 1981 decided on 13th April, 1983, and the criterion is now the continuous length of service. The grievance of the petitioners is that the seniority has to be assigned to them in the District Panchayat on the aforesaid criterion and then they should be given the selection scale from the date from which the persons junior to them have been given.

6. The respondent No.3 has taken the defence that the petitioners ceased to be its employees for all the purposes. They are not on deputation to the Corporation, but on the formation of Corporation they became the employees of the Corporation, and as such, this claim is wholly untenable.

7. The respondent No.4 has come with a case that it is a matter to be decided by the Government and not by it. If the petitioners were taken to be the employees of the District Panchayat and their seniority is assigned accordingly as per the decision of this Court and they have been given the selection scale, then it has no objection.

8. In view of this defence of the respondents No.3 and 4, I considered it to be appropriate in this matter to call an officer of the Education Department. The

counsel for the respondent-State and the Director of Adult and Primary Education on instruction of the officer present in the Court, made a statement that all the petitioners were on deputation to the Municipal Corporation. So now it is no more in dispute that the petitioners continued to be on deputation with the Corporation and their lien was there in the District Panchayat. If that is the position then I find sufficient merits in the contention of the counsel for the petitioners that their seniority has to be fixed in accordance with the decision of this Court in the Letters Patent Appeal aforesaid and they should be given the selection scale from the date on which their juniors were given the selection scale.

9. The counsel for the respondent-State on instruction from the officer concerned of the department submitted that the claim of the petitioners for seniority as well as for selection scale shall be decided by the respondent No.2, and on fixation of the seniority it is found that some junior persons have been given the selection scale then the petitioners shall also be given the selection scale in accordance with law.

10. In view of this position which emerges now, it is not necessary to go in detail in this matter and the interest of justice will be served in case this Special Civil Application is disposed of in terms that the respondent No.2 is directed to determine the seniority of the petitioners in the cadre of primary teachers of District Panchayat, Rajkot in accordance with the criterion as decided by this Court in L.P.A. No.112/81 and thereafter consider their cases for grant of selection scale in accordance with the Government Resolutions dated 16th September, 1976 and 20th December, 1976 with reference to the date from which their juniors were given the selection scale. In case the petitioners are found eligible for selection scale from the date on which their juniors were given or from any later date then they shall be entitled for all the consequential benefits which follow therefrom. In case the petitioners or any of the petitioners is not found suitable for selection scale from the deemed date or from future date then a reasoned order may be passed and copy of the same may be sent to the affected person by registered post. It is expected of the respondent No.3 to undertake this exercise and finalise the same as expeditiously as possible but on or before 30th April, 1998.

11. Now the next question does arise for the claim of the petitioners for the interest on the arrears of

selection scale as well as the costs of this petition. It is not in dispute that the petitioners are the low paid employees and litigation costs heavily. It is also not in dispute that the petitioners have been deprived of the benefit of the selection scale without there being any fault of their. However, the counsel for the petitioners very fairly submitted that till the decision given by this Court in L.P.A. No.112/81 the issue of seniority of the primary teachers of the District Panchayat was not finally decided, but after the decision of this Court regarding the issue of seniority, there is no justification on the part of the respondents No.1 and 2 not to give the benefit of the selection scale to the petitioners. So at least from the date of decision of the L.P.A., the petitioners should be given the interest on the arrears of the selection scale found payable to them on their being found suitable for selection scale by the respondents in compliance of this order.

12. I find sufficient fairness in this contention of the counsel for the petitioners that when the matter regarding the seniority is disposed of and when the petitioners were only on deputation to the Corporation this exercise should have been undertaken by the respondent No.2 on it own irrespective of the fact that this petition is pending before this Court, but this has not been done. So when there being no fault on the part of the petitioners and they are loser of the interest etc. on the amount of arrears of the selection scale to be given to them on their having been found suitable for the same in accordance with law, the respondent No.2 is directed to pay to the petitioners the interest on the arrears of their selection scale at the rate of 12% p.a. from the date of decision of L.P.A. No.112/81 and the calculation of the amount of interest payable to the petitioners shall be made and the amount so calculated should be paid to the petitioners within a period of six months. The six months period has to be counted from the date of receipt of certified copy of this order. The respondents No.1 and 2 are further directed to decide the cases of all the primary school teachers of the District Panchayat of Rajkot who are similarly situated irrespective of the fact whether they approached this Court or not. So the benefit of this judgment should be given to all the similarly situated primary school teachers of the District Panchayat, Rajkot. Rule is made absolute in the aforesaid terms.

13. The petitioners are the low paid employees who have unnecessarily been dragged into litigation by none other than a welfare State and many of them have retired.

So I consider it to be a fit case where the petitioners should be reimburse the expenditure incurred by them in the litigation. The respondents No.1 and 2 are directed to pay to the petitioners Rs.2000/- by way of costs of this Special Civil Application.

zgs/-